

10 August 2011

This presentation and other materials in this packet are provided at the request of Louisiana Department of Transportation and Development (LADOTD) to provide general background information regarding the typical real estate acquisition process and interface with our non-Federal Partners in a Corps of Engineers Civil Works project. The presentation has not been tailored to address the Comite River Diversion project.

Louisiana Department of Transportation and Development is responsible for the acquisition of Lands, Easement, Rights-of-Way, Relocations and Disposal (LERRD) for the Corps of Engineers Comite River Diversion project.

This presentation does not address the scope of work in any contract that LADOTD or its agent, Amite River Basin Commission (ARBC), may procure in the performance of its LERRDs responsibility under the Comite Project Cooperation Agreement.

This presentation does not address the performance requirements that LADOTD or its agent, ARBC, may impose upon its contractors in the performance of work associated with the LERRDs responsibility under the Comite River Diversion Project Cooperation Agreement.

All questions related to any LaDOTD/ARBC solicitation or contract award must be directed to LaDOTD/ARBC, respectively, and not to the Corps of Engineers.

## Real Estate Crediting



U.S. Army Corps of Engineers



# U.S. Army Corps of Engineers New Orleans District

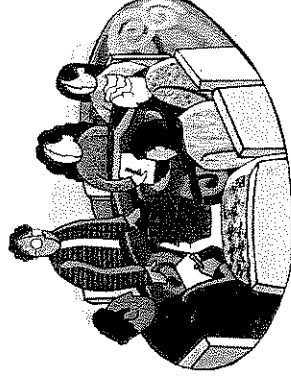
## *Real Estate Crediting -* *Lands, Easements, Rights-of-Way, Relocations, & Disposals* *(LERRDs)*

*August 2011*



## OBJECTIVE

- Purpose – To provide credit to project cost-sharing sponsors for acquisition of lands, easements, rights-of-way, relocations, disposal/borrow areas and the administrative costs associated thereto.
- Process – Review of Application for Credit
- Key to Success – Corps and Sponsor teamwork/partnership throughout the process.





# Criteria for Allowable Costs

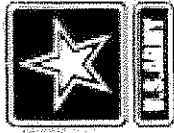
- Actual, necessary and reasonable.
- Allocable to Federal awards.
- Authorized or not prohibited under State/local laws/regulations.
- Conform to any limitations or exclusions set forth under Federal law/regulations.
- Consistent with policies/regulations/procedures that apply uniformly to activities of governmental unit.
- Not a duplication of cost.
- Determined in accordance with generally accepted accounting principles (GAAP).
- In accordance with applicable cost-share agreement.



# Coordination During Real Estate Acquisition

- Concurrent Review and Approval – Facilitates Credit Package Review\*
  - Review of Property Plat Maps and Legal Descriptions
  - Review of Title Information
  - Approval of Appraiser
  - Appraisal Review and Approval
  - Administrative Settlement Approval
  - Review of Relocation Costs
- Assistance in Preparing Credit Package

*\*Review is performed by various technical organizations.*



# **Credit Package Supporting Documentation Examples**

- Mapping/Surveying – copies of invoices and cancelled checks verifying payment.
- Title Evidence – copies of title reports, applicable invoices, and cancelled checks.
- Appraisals – copies of Corps letters indicating approval of appraised values and appraiser fees, invoices, and cancelled checks.
- Negotiations – copies of invoices & cancelled checks for contract work, and certified time sheets/labor reports if negotiations were performed by non-Federal sponsor (NFS) staff. Invoices & time sheets/labor reports must reflect hourly rate.

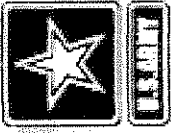


# **Credit Package Supporting Documentation Examples**

*(continued)*

- LERRD payments – copies of just compensation letter, administrative settlement approval, recorded deeds, cancelled checks, expropriation documents.
- Closings – copies of receipts for recording fees, tax payments, cancelled checks, etc.
- Legal expenses – copies of invoices and cancelled checks for contract services, certified time sheets/labor reports if work performed by NFS staff – invoices & time sheets/labor reports must reflect hourly rate and describe the activity performed.





# **Credit Package Supporting Documentation Examples**

*(continued)*

- Residential/Business relocations – copies of verification of relocation expenses incurred, approved applications, and cancelled checks.
- Utility/Facility relocations – copies of verification and documentation of expenses, agreements/contracts, copies of invoices and cancelled checks, where appropriate. This is not intended to be all inclusive. Details of requirements for Utility/Facility relocations and credit for performance of these activities are not fully addressed in this summary presentation.
- Incidental Expenses – subject to actual, reasonable, allocable, and allowable costs – includes reproduction of documents, telephone usage, etc. Invoices for services, along with payment verification must be included.



## **Credit Package Submittal**

- Typically within 180 days after providing Authorization for Entry.
- Following Real Estate Division review, package sent for review and concurrence by the Project Manager.
- Results of credit package review forwarded to NFS.
- Following agreement of credit package results, the Project manager will request an audit.
- Subsequent to audit completion, the NFS will be advised of the amount to be credited.

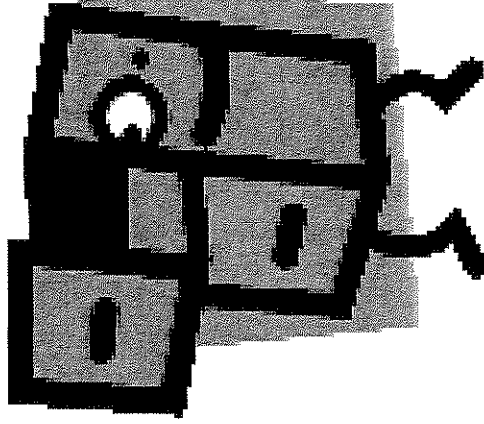


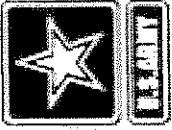
**US Army Corps of Engineers**



## Retention of Records

NFS maintains records for at least 3 years after completion of construction/resolution of construction claims.





# Project Crediting References

- OMB Circular No. A-87, Revised - Cost Principles for State and Local Governments  
[www.whitehouse.gov/omb/circulars a087 20](http://www.whitehouse.gov/omb/circulars/a087_20)

## 04

- WRDA 1986, Title I – General Cost Sharing Responsibilities of NFS
- ER 405-1-12, Chapter 12, Section VII – Credits for LERRDs
- OMB Circular No. A-133 (implementing guidance for the Single Audit Act of 1984, 31 USC 7501-7507)

**Comite PCA**

PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
AND  
CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE  
AND  
AMITE RIVER BASIN DRAINAGE AND WATER CONSERVATION DISTRICT  
FOR THE  
COMITE RIVER DIVERSION PROJECT,  
AMITE RIVER AND TRIBUTARIES, LOUISIANA

THIS AGREEMENT is entered into this 1st day of Oct, 2001, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"); represented by the District Engineer for the New Orleans District, the Louisiana Department of Transportation and Development (hereinafter "LA DOTD") represented by the Secretary of LA DOTD, the City of Baton Rouge and the Parish of East Baton Rouge (hereinafter "CITY-PARISH") represented by its Mayor-President, and the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District (hereinafter "ARBC") represented by its President, (LA DOTD, the City-Parish and ARBC being collectively referred to hereinafter as the "Non-Federal Sponsors").

WITNESSETH THAT:

WHEREAS, construction of the Comite River Diversion Project, Amite River and Tributaries, Louisiana at a location between the Comite River and the Mississippi River, north of the City of Baker, Louisiana and south of the City of Zachary, Louisiana was authorized by section 101(11) of the Water Resources Development Act of 1992, Public Law 102-580, dated October 31, 1992 (WRDA 1992), as amended and reauthorized by Section 301(b)(5) of the Water Resources Development Act of 1996, Public Law 104-303 (WRDA 1996) dated October 12, 1996, and as amended by Section 371 of the Water Resources Development Act of 1999, Public Law 106-53 (WRDA 1999) dated August 17, 1999, with technical corrections to Section 371 of WRDA 1999 in Section 6 of Public Law 106-109 dated November 24, 1999; and

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Cooperation Agreement for construction, operation, maintenance, repair, replacement and rehabilitation, and floodplain management of the Comite River Diversion Project, Amite River and Tributaries, Louisiana (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and Section 371 of WRDA 1999 specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element; and

WHEREAS, the Non-Federal Sponsors do not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended; and

WHEREAS, Section 902 of Public Law 99-662 establishes the maximum amount of costs for the Comite River Diversion Project, Amite River and Tributaries, Louisiana and sets forth procedures for adjusting such maximum amount; and

WHEREAS, the Government and each of the Non-Federal Sponsors have the full authority and capability to perform as hereinafter set forth: LA DCHD intends to cooperate in cost-sharing and financing of the construction in accordance with the terms of this agreement. The CITY-PARISH intends to operate, maintain, repair, replace and rehabilitate the Project in accordance with the terms of this Agreement and ARBC intends to assume responsibility for any liabilities resulting from transfer of water from one watershed to another and to participate in, comply with and implement all applicable Federal floodplain management and flood insurance programs in accordance with Section 402 of the Water Resources Development Act of 1986 and in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree as follows:

#### ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the provision of flood protection for the residents in the lower part of the Comite River basin. The diversion Project will reduce stages on the Comite River from the diversion point to the confluence with the Amite River, and on the Amite River from the confluence with the Comite River near Denham Springs to Port Vincent, and on the Hurricane Creek, Robert Canal, and White, Cypress and Baton Rouge Bayous. The Project provides for the construction of a 12-mile long diversion channel between the Comite and the Mississippi Rivers north of the City of Baker, LA., and south of the City of Zachary, LA. Included in the Project are a diversion structure, a control structure at Lilly Bayou, four drop structures to handle intercepted drainage, three low augmentation

devices to supplement flow in the bayous downstream of the diversion channel, Brooks Lake closure, improvements to Bayou Baton Rouge, White Bayou and Cypress Bayou, and the provision of Project mitigation areas, as generally described in the Amite River and Tributaries, Louisiana, Comite River Basin Feasibility Study, dated September 1990, as approved by the Chief of Engineers dated August 27, 1991, and the Design Memorandum No. 1 dated July 1995, and as amended by the Post Authorization Change Report for the Comite River Diversion Plan, dated March 1996, revised August 1996, and as approved by the Director of Civil Works dated October 3, 1997.

B. The term "total project costs" shall mean all costs incurred by the LA DOTD and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing highways and the alteration, lowering, raising or replacement of existing railroad lines, insofar and only insofar as such railroad lines must be replaced with a railroad bridge and approaches to said railroad bridge; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the LA DOTD's total cash contribution required in accordance with Articles II.D.1. and II.D.3. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsors in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the New Orleans District



(hereinafter the "District Engineer") notifies the Non-Federal Sponsors in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof. The term "railroad" shall mean any public railroad, including bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing highways and existing railroad lines, insofar and only insofar as such railroad lines must be replaced with a railroad bridge and approaches to said railroad bridge) when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the CITY-PARISH to operate, maintain, repair, replace and rehabilitate (in accordance with Article VIII of this Agreement) in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsors in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

## ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the I.A DOTD, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of highways and the alteration, lowering, raising or replacement of existing railroad lines, insofar and only insofar as such railroad lines must be replaced with a railroad bridge and approaches to said railroad bridges), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the LA DOTD the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the LA DOTD has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the LA DOTD the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the LA DOTD with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the LA DOTD the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the LA DOTD, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsors with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract for construction of the Project, cumulative financial obligations for construction would exceed \$176,291,000, the Government and the LA DOTD agree to defer award of that contract and all subsequent contracts for construction of the Project until such time as the Government and the LA DOTD agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three (3) years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the LA DOTD, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The LA DOTD may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the LA DOTD in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The LA DOTD shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsors in writing and furnish the CITY-PARISH with an

Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the CITY-PARISH shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The LA DOTD shall contribute a minimum of 25 percent, but not to exceed 50 percent, of total project costs in accordance with the provisions of this paragraph.

1. The LA DOTD shall provide a cash contribution equal to 5 percent of total project costs in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the LA DOTD shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the LA DOTD must provide for the construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

3. If the Government projects that the value of the LA DOTD's contributions under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement will be less than 25 percent of total project costs, the LA DOTD shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the LA DOTD's total contribution equal to 25 percent of total project costs.

4. If the Government determines that the value of the LA DOTD's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 45 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the LA DOTD for any such value in excess of 45 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the LA DOTD.

E. The LA DOTD may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the LA DOTD. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the LA DOTD in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The LA DOTD shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable

borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the LA DOTD shall be responsible, as between the Government and the LA DOTD, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the LA DOTD in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the LA DOTD has met its obligations under paragraphs B., D., and E. of this Article.

G. The LA DOTD shall not use Federal funds to meet the LA DOTD's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

H. The ARBC agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

I. Not less than once each year the ARBC shall inform affected interests of the extent of protection afforded by the Project.

J. The ARBC shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

K. The ARBC shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a Non-Federal interest to have prepared within one year after the date of signing this Agreement, a floodplain management plan. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by ARBC to preserve the level of flood protection provided by this Project. As required by Section 402, as amended, the ARBC shall implement such plan not later than one year after completion of construction of the Project. The ARBC shall provide an information copy of the plan to the Government upon its preparation.

L. The ARBC shall assume responsibility for any liabilities resulting from transfer of water from one watershed to another.

M. The CITY-PARISH shall prescribe and enforce, within its jurisdictional boundaries, regulations to prevent obstruction of or encroachment within the limits of the Project area that would reduce the level of protection it affords or that would hinder operation or maintenance of the Project.

N. As required by Section 6 of Public Law 106-199, any reduction in the non-Federal proportionate share that results from the modifications authorized by Section 371 (a) of WRDA 1999 shall be credited toward the share of total project costs to be paid by ARBC. Any credit under this provision shall be provided to ARBC by LA DOTD.

#### ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the LA DOTD, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the LA DOTD with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the LA DOTD must provide, in detail sufficient to enable the LA DOTD to fulfill its obligations under this paragraph, and shall provide the LA DOTD with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the LA DOTD shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the LA DOTD shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the LA DOTD must provide for that contract. For so long as the Project remains authorized, the LA DOTD shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the LA DOTD are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the LA DOTD, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the LA DOTD with general written descriptions of such improvements in detail sufficient to enable the LA DOTD to fulfill its obligations under this paragraph, and shall provide the LA DOTD with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the LA DOTD shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the LA DOTD shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the LA DOTD, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the LA DOTD with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the LA DOTD to fulfill its obligations under this paragraph, and shall provide the LA DOTD with a written notice to proceed with such relocations. Prior to the end of the period of construction, the LA DOTD shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the LA DOTD shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The LA DOTD in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the LA DOTD's share of total project costs.

E. The LA DOTD shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The LA DOTD shall receive credit toward its share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the LA DOTD must provide pursuant to Article III of this Agreement, and for the value of the relocations that the LA DOTD must perform or for which it must ensure performance pursuant to Article III of this Agreement. However, the LA DOTD shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project. The LA DOTD also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are

provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the LA DOTD on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the LA DOTD provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the LA DOTD after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The LA DOTD shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the LA DOTD and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the LA DOTD's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the LA DOTD's appraisal, the LA DOTD may obtain a second appraisal, and the fair market value shall be the amount set forth in the LA DOTD's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the LA DOTD's second appraisal, or the LA DOTD chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the LA DOTD. In the event the LA DOTD does not approve the Government's appraisal, the Government, after consultation with the LA DOTD, shall consider the Government's and the LA DOTD's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the LA DOTD for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the LA DOTD, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the LA DOTD, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value

shall be the lesser of the approved amount or the amount paid by the LA DOTD, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the LA DOTD shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the LA DOTD shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the LA DOTD shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the LA DOTD agree as to an appropriate amount, then the LA DOTD shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the LA DOTD cannot agree as to an appropriate amount, then the LA DOTD may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the LA DOTD within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.



C. After consultation with the LA DOTD, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

3. Crediting for relocations performed within the Project boundaries is subject to satisfactory compliance with applicable federal labor laws covering non-Federal construction, including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c). Crediting may be withheld, in whole or in part, as a result of the LA DOTD's failure to comply with its obligations under these laws.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

#### ARTICLE V -PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Secretary of LA DOTD, the Mayor-President of the CITY-PARISH and the President of the Board of Commissioners of the ARBC and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of construction. The Government's Project Manager and a counterpart named by the LA DOTD shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the LA DOTD's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the LA DOTD, the CITY-PARISH and the ARBC.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation by the Government and LA DOTD in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement. The CITY-PARISH and the ARBC shall each be responsible for their respective costs of participation in the Project Coordination Team.

#### ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the Government and the LA DOTD and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the LA DOTD with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the LA DOTD's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the LA DOTD for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be \$153,000,000, and the LA DOTD's cash contribution required under Article II.D. of this Agreement is projected to be \$7,607,000. Such amounts are estimates subject to adjustment by the Government and are

not to be construed as the total financial responsibilities of the Government and the LA DOTD.

B. The LA DOTD shall provide the cash contribution required under Articles II.D.1. and II.D.3. of this Agreement in accordance with the provisions of this paragraph

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the LA DOTD in writing of such scheduled date and the funds the Government determines to be required from the LA DOTD to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the LA DOTD shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, B2," to the District Engineer or verifying to the satisfaction of the Government that the LA DOTD has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the LA DOTD, or presenting the Government with an irrevocable letter of credit acceptable to the Government for the required funds or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. For the second and subsequent fiscal years of construction, the Government shall notify the LA DOTD in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the LA DOTD to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the LA DOTD shall make the full amount of the required funds for that fiscal year available to the Government through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the LA DOTD such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the LA DOTD to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the LA DOTD in writing of the additional funds required, and provide an explanation of why additional funds are required, and the LA DOTD, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the LA DOTD shall provide the Government with the full amount of the funds required to pay for such additional work through any of the payment mechanisms specified in Article VI.B.1. of this Agreement. The Government shall draw from the funds provided by the LA DOTD such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the LA DOTD must provide additional funds to meet the LA DOTD's cash contribution, the Government shall notify the LA DOTD in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days thereafter, the LA DOTD shall provide the Government with the full amount of the additional required funds through any of the payment mechanisms specified in Article VI.B.1. of this Agreement.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the LA DOTD with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the LA DOTD's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the LA DOTD is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the LA DOTD shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the LA DOTD's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement by delivering a check payable to "FAO, USAED, B2," to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. In the event the final accounting shows that the total contribution provided by the LA DOTD exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the LA DOTD no later than 90 calendar days after the final accounting is complete; however, the LA DOTD shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.D.1. of this Agreement. In the event existing funds are not available to refund the excess to the LA DOTD, the Government shall seek such appropriations as are necessary to make the refund.

#### ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The Government shall pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The remaining 50 percent of any such costs for the services provided by the third party shall be paid by the Non-Federal Sponsors. The respective responsibilities of LA DOTD, the CITY-PARISH and the ARBC for the payment of such third party costs shall be determined, as between themselves, based upon the nature of the purported breach and the obligation or issue in dispute. However, as between the Government and the Non-Federal Sponsors, the obligation of the Non-Federal Sponsors to pay 50 percent of the cost of the third party services shall be a solidary obligation, such that LA DOTD, the CITY-PARISH and ARBC shall each be obligated to pay the entirety of the Non-Federal share of the cost of said third party services. The Government, at its sole discretion, may demand the whole performance of said obligation and responsibility at any time from any or all of the entities designated herein as one of the Non-Federal Sponsors, without regard to the nature of the purported breach of this Agreement or to the issue or obligation that is in dispute. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article ILC. of this Agreement and for so long as the Project remains authorized, the CITY-PARISH shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto. The CITY-PARISH shall not be responsible for the OMRR&R of any state highway bridge or railroad bridge created by this project.

B. The CITY-PARISH hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the CITY-PARISH owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the CITY-PARISH for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the CITY-PARISH. If, after 30 calendar days from receipt of notice, the CITY-PARISH continues to fail to perform, the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the CITY-PARISH owns or controls for access to the Project for the purpose of completing, operating, maintaining,

repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the CITY-PARISH of responsibility to meet the CITY-PARISH's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

#### ARTICLE IX - INDEMNIFICATION

The LA DOTD shall hold and save the Government free from all damages arising from the construction of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors. The CITY-PARISH shall hold and save the Government free from all damages arising from operation, maintenance, repair, replacement and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors. The ARBC shall hold and save the Government free from all damages arising from the performance of ARBC's obligations pursuant to Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), except for damages due to the fault or negligence of the Government or its contractors.

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the LA DOTD shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the LA DOTD shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of construction and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the LA DOTD shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the LA DOTD is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the LA DOTD and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the LA DOTD and independent auditors any information necessary to enable an audit of the LA DOTD's activities under this Agreement. The costs of any LA DOTD audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the LA DOTD is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the LA DOTD, the CITY-PARISH and ARBC and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army." The LA DOTD is also required to comply with all applicable federal labor standards requirements including, but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c).

#### ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the LA DOTD, CITY-PARISH and the ARBC each act in an independent capacity, and none are to be considered the officers, agents, or employees of the others.

B. In the exercise of their rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

#### ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the LA DOTD fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the LA DOTD in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the LA DOTD elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

#### ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the LA DOTD shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the LA DOTD determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the LA DOTD with prior specific written direction, in which case the LA DOTD shall perform such



investigations in accordance with such written direction. All actual costs incurred by the LA DOTD for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project, the LA DOTD and the Government shall provide prompt written notice to each other, and the LA DOTD shall not proceed with the acquisition of the real property interests until both parties agree that the LA DOTD should proceed.

C. The Government and the LA DOTD shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the LA DOTD determine to initiate or continue with construction after considering any liability that may arise under CERCLA, the LA DOTD shall be responsible, as between the Government and the LA DOTD, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the LA DOTD fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the LA DOTD's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The LA DOTD and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the CITY-PARISH, the CITY-PARISH shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the CITY-PARISH shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

## ARTICLE XVI. NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the LA DOTD:

Secretary  
Louisiana Department of Transportation and Development  
P.O. Box 94245  
Baton Rouge, Louisiana 70804-9245

If to the CITY-PARISH:

Mayor-President  
City of Baton Rouge and Parish of East Baton Rouge  
P.O. Box 1471  
Baton Rouge, Louisiana 70821

If to the ARBC:

President of the Board of Commissioners  
Atchafalaya River Basin Drainage and Water Conservation District  
3535 S. Sherwood Forest Blvd., Suite 135  
Baton Rouge, Louisiana 70816-2255

If to the Government:

U.S. Army Engineer District  
New Orleans  
Attn: CEMVN-DD-P  
P.O. Box 60267  
New Orleans, Louisiana 70160-0267

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XVII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall not be included in total project costs but shall be cost shared between the LA DOTD and the Government consistent with the minimum non-Federal cost sharing requirements for the underlying flood control purpose, as follows: 25 percent borne by the LA DOTD, and 75 percent borne by the Government.

## ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The Non-Federal Sponsors have reviewed the provisions set forth in Section 902 of Public Law 99-662, as amended, and understand that Section 902 establishes the maximum amount of total project costs for the Comite River Diversion Project, Amite River and Tributaries, Louisiana. Notwithstanding any other provision of this Agreement, the Government shall not make a new Project financial obligation, make a Project expenditure, or afford credit toward total project costs for the value of any contribution provided by the LA DOTD, if such obligation, expenditure, or credit would result in total project costs exceeding this maximum amount, unless otherwise authorized by law. On the effective date of this Agreement, this maximum amount is estimated to be \$176,291,000, as calculated in accordance with ER 1105-2-100 using October 1, 2000 price levels and allowances for projected future inflation. The Government shall adjust this maximum amount in accordance with Section 902.

## ARTICLE XX OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of Louisiana, where creating such an obligation would be inconsistent with Article 3, Section 16(A) of the 1974 Constitution of the State of Louisiana.

B. The LA DOTD intends to satisfy its obligations under this Agreement. The LA DOTD shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the LA DOTD's obligations under this Agreement for each year (biennium), and will use all reasonable and lawful means to secure the appropriations for that year (biennium) sufficient to make the payments necessary to fulfill its obligations hereunder. The LA DOTD reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these obligations, the LA DOTD shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the LA DOTD is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

BY: 

Thomas F. Julich  
Colonel, Corps of Engineers  
District Engineer

DATE: 10/01

THE LOUISIANA DEPARTMENT  
OF TRANSPORTATION AND  
DEVELOPMENT

BY: 

Kam K. Movassaghi  
Secretary  
Louisiana Department of  
Transportation and Development

DATE: 9/27/01

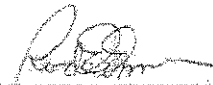
RECOMMENDED FOR  
APPROVAL

BY: 


Edmond J. Preau  
Assistant Secretary for Public Works  
and Intermodal Transportation

BOARD OF COMMISSIONERS  
AMITE RIVER BASIN DRAINAGE  
AND WATER CONSERVATION DISTRICT

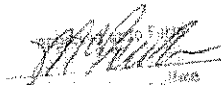
THE CITY OF BATON ROUGE  
AND  
PARISH OF EAST BATON ROUGE

BY:   
Rod E. Enamer  
President

DATE: 9/27/01

BY:   
Bobby Simpson  
Mayor-President

DATE: 9/26/2001

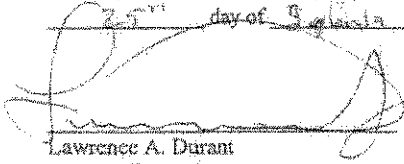
  
Michael J. Ford  
Mayor

CERTIFICATE OF AUTHORITY

I, Lawrence A. Durant, do hereby certify that I am the principal legal officer of the Louisiana Department of Transportation and Development, that the Louisiana Department of Transportation and Development is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Louisiana Department of Transportation and Development in connection with the Comite River Diversion Project, Amite River and Tributaries, Louisiana, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Louisiana Department of Transportation and Development have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

25<sup>th</sup> day of September, 2001.



Lawrence A. Durant  
General Counsel

Louisiana Department of Transportation and Development

# CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
Kam K. Movassaghi, Secretary  
Louisiana Department of Transportation and Development

DATE: Sept. 27, 2001

CERTIFICATE OF AUTHORITY

I, Michael J. Baker, do hereby certify that I am the principal legal officer of the City of Baton Rouge and Parish of East Baton Rouge, that the City of Baton Rouge and Parish of East Baton Rouge is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Baton Rouge and Parish of East Baton Rouge in connection with the Corneille River Diversion Project, Amite River and Tributaries, Louisiana, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Baton Rouge and Parish of East Baton Rouge have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
25 day of September, 2006

Michael J. Baker  
General Counsel

City of Baton Rouge and Parish of East Baton Rouge



# CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.


(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
Bobby Simpson  
Mayor-President  
City of Baton Rouge and Parish of East Baton Rouge


DATE: 9/26/2001

  
Bobby Simpson  
Mayor-President

CERTIFICATE OF AUTHORITY

I, Jan Harris, do hereby certify that I am the principal legal officer of the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District, that the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District in connection with the Amite River Diversion Project, Amite River and Tributaries, Louisiana, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Board of Commissioners of the Amite River Basin Drainage and Water Conservation District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
27<sup>th</sup> day of September 2001.

  
\_\_\_\_\_  
General Counsel  
Board of Commissioners  
Amite River Basin Drainage and Water Conservation District

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Rod E. Emmer

President

Board of Commissioners

Amite River Basin Drainage and Water Conservation District

DATE: 9/27/01

AUG 22 2001

829

RESOLUTION

41234

AUTHORIZING THE MAYOR-PRESIDENT TO EXECUTE A PROJECT COOPERATION AGREEMENT ("PCA") WITH THE DEPARTMENT OF THE ARMY (CIVIL WORKS), THE LOUISIANA DEPARTMENT OF TRANSPORTATION & DEVELOPMENT AND THE AMITE RIVER BASIN DRAINAGE AND WATER CONSERVATION DISTRICT IN CONNECTION WITH THE COMITE RIVER DIVERSION PROJECT, AMITE RIVER AND TRIBUTARIES, LOUISIANA.

Brian M. May  
OFFICE ADMINISTRATOR

BE IT RESOLVED by the Metropolitan Council of the Parish of East Baton Rouge and City of Baton Rouge that

Section 1. The Mayor-President is hereby authorized to execute a Project Cooperation Agreement ("PCA") with the Department of the Army (Civil Works), the Louisiana Department of Transportation & Development and the Amite River Basin Drainage and Water Conservation District in connection with the Comite River Diversion Project, Amite River and Tributaries, Louisiana.

Section 2. Said agreement shall be approved by the Office of the Parish Attorney.

## LERRD Toolbox

## APPENDIX C

### LERRD TOOLBOX

#### C-1. Checklist for Land Payments.

a. Is purchase price = approved appraised value or informal valuation?

b. If purchase price > approved appraised value or informal valuation, is there approval by Chief, Real Estate Division?

c. If purchase price < approved appraised value or informal valuation, is there documentation explaining variance?

(1) If yes, credit allowed at that value.

(2) If no, determine why?

(a) Is estate in the deed = estate in the appraisal?

(b) Is area in the deed = area in the appraisal?

(c) Are special damages avoided?

(d) Obtain documentation from Appraisal Branch.

d. Does the estate acquired agree with the approved ROW drawings?

(1) If yes, credit is allowed.

(2) If no, is there documentation in the file to support the variance?

e. Does the legal description of the deed agree with the approved ROW drawings?

C-2. Checklist for Utility and Facility Relocations. Check Attorney's Opinion of Compensability to determine whether the relocation is compensable and forward to appropriate District element for review.

C-3. Checklist for Incidental Real Estate Expenses.

a. Mapping & Surveying.

- (1) Are survey/mapping costs reasonable?
- (2) Are survey/mapping costs pertaining to parcels included on approved ROW drawings?
- (3) Survey/mapping costs may be lump sum.

b. Title Evidence.

- (1) Are title evidence costs reasonable?
- (2) Is invoice parcel specific?
- (3) Does the invoice specify the type of policy?

c. Appraisal Fees.

- (1) Are appraisal fees reasonable for that parcel?
- (2) Do invoice costs agree with contract amounts?
- (3) Does file support multiple appraisals if multiple appraisal fees are requested for credit?
- (4) Discuss with Appraisal Branch any concerns or questions.

d. Negotiation Fees.

- (1) Are overall hours billed relative to the number of ownerships reasonable? Is hourly rate reasonable?
- (2) In-house costs -
  - (a) Has timesheet been approved?

(b) Do hourly rates on timesheet agree with the total dollars claimed? (check math)

(c) Contracted out. Are costs reasonable?

e. Closing Fees.

(1) Does the file contain the receipt for the recording fees?

(2) Is there payment and closing sheet in the file to document any tax payments?

f. Legal Expenses.

(1) Does the invoice or timesheet reflect an hourly rate?

(2) Does the amount billed agree with the invoice total? (check math)

(3) Are the attorney fees reasonable?

(4) Does the invoice or timesheet contain an explanation of the work performed?

g. P.L. 91-646, Relocation Assistance Benefits.

(1) Benefit Payment.

(a) Does the file contain an approved relocation assistance application? Were the approved amounts in compliance with the law?

(b) Does the amount disbursed agree with the approved application amount?

(c) Is there proof of payment?



(2) Relocation Provider

(a) Does the invoice or timesheet reflect an hourly rate?

(b) Does the amount billed agree with the invoice total? (check math)

(c) Are the fees reasonable?

(d) Does the invoice or timesheet explain the work performed?

h. Administrative Expenses.

(1) Is the expense allowable as per OMB Circular A-87?

(2) Is there a description of the expense and evidence of payment?

(3) If using an indirect rate, have they provided an indirect cost rate proposal, subject to audit?

i. Miscellaneous Expenses.

(1) Were they required for the project?

(2) Have they been approved through the appropriate channels?

(3) Are they reasonable?

## LERRD Toolbox Instruction Sheet

### CREDIT DOCUMENTATION REQUIREMENTS

1. The NFS acquires LERRD by various means including direct purchase, donation and through condemnation. The sponsor may also be required to perform various utility and facility relocations. To receive credit for acquiring the lands, easements, and rights-of-way, completing relocations, and incidental expenses, the NFS must provide documentation to support:

a. Land Payments.

b. Direct Purchase Acquisitions. The NFS will provide a copy of the letter of just compensation, recorded deed, check to the landowner, resolution authorizing the sale of lands, etc.. In the case of negotiated settlements and/or administrative settlements, the NFS will furnish supporting documentation to include the NFS request and justification for the payment amount and the Government's approval of the request in the form of written endorsement by the District Chief of RE. In the case of negotiated settlements, NFS justification must explain the reasons why the NFS considers it in the best interest of the Government for the settlement to exceed FMV.

c. Condemnations. The NFS will provide a copy of court documents to include final judgments, stipulated agreements, order for distribution, etc.

d. Donations. The NFS will furnish a copy of the landowner's agreement to donate the land in the form of a release which waives the landowner's right to just compensation for the interests granted. Note that even if the landowner waives his/her right to an appraisal an appraisal may still be needed to determine the value of these property interests for credit purposes.

e. Relocations. The sponsor will provide verification of all expenses related to the relocation activity to include a

copy of contracts and other legal agreements, invoices, cancelled checks, etc. Based on documentation furnished by the NFS, Engineering Division or the Project Manager will validate all engineering and construction costs and Real Estate Division will validate associated right-of-way acquisition costs to determine which costs are, credit eligible.

f. Incidental Real Estate Expenses. The NFS will provide documentation to support any of the following activities related to the acquisition of the required real estate interests:

g. Mapping and Surveying. The sponsor will provide copies of invoices, cancelled checks verifying payment for services, certified timesheets if performed by sponsor's in-house employee, etc. Timesheets will reflect the employee's hourly salary rate and the number of hours worked on the project.

h. Title Evidence. The sponsor will provide a copy of all title evidence reports, invoices, cancelled checks, etc.

i. Appraisal. The sponsor will provide a copy of the contract with the local appraiser, approved appraisal report, invoices for appraisal services, cancelled checks, etc.

j. Negotiation. The NFS will provide copies of invoices for negotiation services, cancelled checks, certified time sheets if negotiations were performed by NFS staff.

k. Closing. The NFS will provide a copy of receipts for recording fees, tax payments, etc.

1. Legal Expense. - Throughout the acquisition process the NFS may incur legal expenses. The sponsor will provide invoices for services by contract attorneys or certified timesheets for services provided by staff attorneys. The invoices and timesheets will reflect the hourly rate for the legal service performed and should describe the legal activity. Public Law 91-646 Relocation Assistance Benefits. The NFS will provide a

copy of approved application for Relocation Assistance Benefits, copy of the check disbursing the benefit to the landowner, etc.

m. Administrative Expenses. The NFS will receive credit for various administrative expenses related to the LERRD acquisitions. OMB Circular A-87 details those administrative expenses, which are allowed for credit on federally funded projects. These expenses include, but are not limited to, reproduction of materials, telephone usage, project related travel expenses, etc. To receive credit for these expenses, the sponsor must provide copies of invoices for services, payment verification, etc.

2. The NFS should be encouraged to submit the above requests for credit as they are incurred. At a minimum the sponsor should submit the credit requests to meet the standard provided in ER 405-1-12, Chapter 12-40 which states " the non-Federal sponsor should submit its credit request with supporting documents within 180 days after it provides the Government authorization for entry..." In accordance with the PCA the sponsor is required to maintain a record of all expenditures related to acquisition of LERRD. These records are subject to review and audit.

405-1-12, C12, Sec VII

conditions must be in writing and be consistent with the provisions of the PCA for the project. The non-Federal sponsor remains responsible for all costs of the relocations work and must pay the Government in advance of the Government incurring costs for performance of such work. For elaboration on performance of relocations on behalf of the non-Federal sponsor, see ER 1165-2-131, LOCAL COOPERATION AGREEMENTS FOR NEW START CONSTRUCTION PROJECTS.

SECTION VII. CREDITS FOR LANDS, EASEMENTS AND RIGHTS-OF-WAY  
AND RELOCATIONS FOR COST SHARED PROJECTS

12-35. General.

a. Title I of WRDA 86 describes the general cost sharing responsibilities of non-Federal sponsors for many types of civil works water resources projects. As discussed in paragraph 12-29 of this chapter, such responsibilities include that a non-Federal sponsor must provide the LER and must perform or ensure the performance of relocations required for the project. As described in Sections 103(a) and (I) of WRDA 86 for flood control and other purposes and as described in Section 101(a) of WRDA 86, as amended, for harbor or inland harbor commercial navigation projects, the non-Federal sponsor is entitled to credit against its share of project costs for the value of LER it provides and the value of relocations that are required for the project. Generally, the amount of credit afforded will directly effect the amount of the non-Federal sponsor's cash contribution otherwise required for construction of the project.

b. Generally, for the purpose of determining the amount of credit to be afforded, the value of LER is the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, that the non-Federal sponsor provided for the project as required by the Government. Generally, the fair market value is determined by, or is based upon, an appraisal prepared by a qualified appraiser. A more detailed description of the valuation and crediting process, including exceptions to this general rule, is presented in the following paragraphs of this section. In addition, the specific requirements relating to valuation and crediting contained in the executed PCA for a project must also be reviewed and applied.

c. Generally, for the purpose of determining the amount of credit to be afforded, the value of facility/utility relocations other than a highway is the portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items. For a relocation of a highway, the value is the portion of relocation costs necessary to accomplish the relocation in accordance with the design standard that the state where the highway is located would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items. For elaboration on policies pertaining to credits for relocations, see ER 1165-2-131, LOCAL COOPERATION AGREEMENTS FOR NEW START CONSTRUCTION PROJECTS.

d. In reviewing requests for credit from the non-Federal sponsor, Real Estate must be aware of its fiscal responsibilities to both the non-Federal sponsor and the Government. In order to provide for uniform and consistent treatment of non-Federal sponsors concerning the crediting of LER for cost shared projects, procedures in this section should be followed to the greatest extent practicable. Requests for deviation from the policies described in this section, or requests for guidance on unique or unusual categories of LER credit claims not addressed herein, should be forwarded through Division to HQUSACE, (ATTN: CERE-AP), for appropriate coordination and final determination.

12-36. Value of Lands, Easements, and Rights-of-Way (LER).

a. Date of Valuation.

(1) The fair market value of LER owned by the non-Federal sponsor on the effective date of the PCA for the project is the fair market value of the real property interests as of the date the non-Federal sponsor provides the Government with authorization for entry thereto for construction purposes.

(2) The fair market value of LER acquired by the non-Federal sponsor after the effective date of the PCA for the project is the fair market value of the real property interests at the time the interests are acquired.

(3) For LER owned by the non-Federal sponsor on the effective date of the PCA for the project that are required for the construction of work by the non-Federal sponsor that is authorized under Section 104 of WRDA 86, as amended, the fair market value is the value of the real property interests as of the date the non-Federal sponsor awards the first construction contract for the Section 104 work, or, if the non-Federal sponsor performs the construction with its own labor, the date that the non-Federal sponsor begins construction of the Section 104 work. The same principles apply to construction efforts by the non-Federal sponsor approved pursuant to authorities other than Section 104 including Section 215 of the Flood Control Act of 1968, as amended, Section 204 of WRDA 86, as amended, and Section 211 of WRDA 96.

b. General Valuation Procedure. For each real property interest, the non-Federal sponsor must obtain an appraisal that is prepared by a qualified appraiser who is acceptable to the Government. See Chapter 4 of this regulation. The appraisal must be prepared in accordance with applicable rules of just compensation, as specified by the Government. The fair market value of the real property interest is the amount set forth in the non-Federal sponsor's appraisal if that appraisal is approved by the Government. In the event that such appraisal is not approved by the Government, the non-Federal sponsor may obtain a second appraisal, and the fair market value is the amount set forth in the second appraisal if that appraisal is approved by the Government. In the event that the Government does not approve the non-Federal sponsor's second appraisal, or the non-Federal sponsor does not choose to obtain a second appraisal, or otherwise fails to provide the second appraisal in a timely fashion, the Government must obtain an appraisal and the fair market value is the amount set forth in the Government's appraisal if such

appraisal is approved by the non-Federal sponsor. In the event that the non-Federal sponsor does not approve the Government's appraisal, the Government, after consultation with the non-Federal sponsor, shall consider the Government's and the non-Federal sponsor's appraisals and determine an amount based thereon which shall be deemed to be the fair market value.

c. Applicable Rules of Just Compensation. Although State rules will typically control the appraisal process for acquisition and crediting purposes by a non-Federal sponsor, application of Federal rules of just compensation may be required as a matter of policy for crediting purposes. For discussion on this issue, see paragraph 12-37.c of this chapter; and Chapter 4, Appraisal, of this regulation. Also see 33 U.S.C. §595 regarding the Federal special benefits rule and 33 U.S.C. §595.a regarding the Federal rule for partial takings of lands adjacent to navigable waters.

d. Payments Exceeding Approved Appraised Amount.

(1) Approval Process. If the amount paid or proposed to be paid by the non-Federal sponsor to a landowner for the real property interest exceeds the amount determined pursuant to subparagraph b of this paragraph to be fair market value, the Government, at the request of the non-Federal sponsor, must consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the non-Federal sponsor, may approve in writing an amount greater than the amount determined pursuant to subparagraph b of this paragraph but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the non-Federal sponsor, but no less than the amount determined pursuant to subparagraph b of this paragraph. See 49 C.F.R. §24.102(I) regarding administrative settlements as a part of the acquisition process.

(2) Approval Authority. Division Commanders and their Chiefs of Real Estate and District Commanders and their Chiefs of Real Estate can determine fair market value in accordance with subparagraph d.(1) of this paragraph up to the amounts and percentages set forth in their respective written delegations of authority for acceptance of offers to sell for Federal acquisitions. A copy of the general written delegation of authority to divisions is included as Appendix 12-G to this chapter. If a division has redelegated a portion of its delegated authority as authorized in Appendix 12-G, its districts will have a written redelegation of authority that describes the extent of its approval authority for acceptance of offers for Federal acquisitions. For determinations that exceed the amount of delegated or redelegated authority, a request must be submitted by the district, together with recommendation, to the division, or through division to CERE-A as the case may be, for determination.

(3) Redelegation to Non-Federal Sponsors. U.S. Army District Commanders and their Chiefs of Real Estate may redelegate their authority provided by subparagraph d.(2) of this paragraph, in whole or in part, to a non-Federal sponsor as follows:



(a) Factors that should be weighed in determining whether to exercise this discretionary authority include the experience, qualifications, and overall professional capability of the non-Federal sponsor as well as the nature and extent of the relationship established between the non-Federal sponsor and the district including the Chief of Real Estate.

(b) Redelegated approval authority cannot exceed the amounts or percentages that are contained in the specific written redelegation of authority for acceptance of offers to sell for Federal acquisitions that has been provided to that U.S. Army District Commander and Chief of Real Estate from its respective U.S. Army Division Commander and Chief of Real Estate.

(c) Limits to and conditions of redelegated authority as established by the District Chief of Real Estate must be fully discussed with the responsible non-Federal sponsor representative and the nature and extent of the redelegated authority must be reduced to writing prior to its application.

(d) Redelegation to non-Federal sponsors is intended to expedite the acquisition process where, during negotiations with a landowner, a non-Federal sponsor desires credit assurances for proposed payments to a landowner in excess of the amount set forth in the non-Federal sponsor's appraisal that has previously been approved by the Government. Accordingly, redelegated authority to non-Federal sponsors does not apply to value determinations where acquisition has been completed on the subject tract.

e. Valuation Procedure for Condemnations.

(1) For LER acquired through condemnation proceedings instituted after the effective date of the PCA for the project, the non-Federal sponsor must, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute the proceedings together with an appraisal of the specific real property interests to be acquired.

(2) After receipt of the written notice and appraisal, the Government has 60 days to review the appraisal. If the Government has previously approved the appraisal by application of the process discussed in subparagraph b of this paragraph, or provides written approval of, or takes no action on, the appraisal within this 60-day period, the non-Federal sponsor must use the amount set forth in the appraisal as the estimate of just compensation for the purpose of instituting its eminent domain proceeding.

(3) If the Government provides written disapproval of the appraisal to the non-Federal sponsor within the 60-day period, the Government and non-Federal sponsor must consult in good faith to promptly resolve the issues or areas of disagreement identified in the Government's written disapproval. If, after good faith consultation, the Government and the non-Federal sponsor agree as to an appropriate amount, then the non-Federal sponsor must use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. However, if, after good faith consultation, no agreement can be reached as to an appropriate amount, then the non-Federal sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

(4) Fair market value for LER acquired by eminent domain proceedings in accordance with the above procedures shall be either the amount of the court award for the real property interests taken to the extent that the Government determined such interests are required for the construction, operation, and maintenance of the project or the amount of any stipulated settlement or portion thereof that the Government approves in writing. To the greatest extent practicable, the Government and the non-Federal sponsor should consult and cooperate prior to a settlement conference in an effort to reach advance agreement on an amount, or range of amounts, for which the non-Federal sponsor would be entitled to credit if settlement was reached during that conference in such amount, or within such range.

(5) U.S. Army Division Commanders and their Chiefs of Real Estate and U.S. Army District Commanders and their Chiefs of Real Estate can determine fair market value by approving stipulated settlements in condemnation actions initiated by the non-Federal sponsor in accordance with subparagraph e.(4) of this paragraph up to the amounts set forth in their respective written delegations of authority for approval of settlement offers in Federal condemnation actions. A copy of the general written delegation of authority to divisions is included as Appendix 12-G. If a division has redelegated a portion of its delegated authority as authorized in Appendix 12-G, its districts will have a written redelegation of authority that describes the extent of its approval authority for settlement offers in Federal condemnation actions. For stipulated settlement amounts that exceed the amount of delegated or redelegated authority, a request for determination must be submitted by the district, together with recommendation, to the division, or through division to CERE-A as the case may be, for determination.

(6) For LER acquired by a non-Federal sponsor through condemnation proceedings instituted prior to the effective date of the PCA for the project, the valuation procedures discussed in subparagraphs b and d of this paragraph will apply once the PCA is executed.

f. Incidental Costs.

(1) For LER acquired by a non-Federal sponsor within a five-year period preceding the effective date of the PCA for the project, or at any time after the effective date of that PCA, the value of the real property interests also will include the documented incidental costs of acquiring such interests, as determined by the Government, subject to an audit to determine the reasonableness, allocability, and allowability of costs. See OMB Circular A-87, Cost Principles for State and Local Governments for applicable principles. These incidental costs include, but are not necessarily limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps and mapping costs, as well as the actual amounts expended for payment of P.L. 91-646 relocation assistance benefits as required for compliance with law and implementing regulations.

(2) These incidental costs may also include payments made for personal property, loss of business or good will, or other payments, that are generally recognized as compensable, and required to be paid, by applicable State law due to the acquisition of a real property interest required for the project as

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1 May 98

determined by the Government. Credit requests for payments made for personal property, loss of business or good will, or other payments, must be submitted with sufficient documentation, as determined by the Government, to show that the non-Federal sponsor was required to make payment therefor under State law.

(3) Credit afforded for incidental costs shall not include any amount that is excluded from credit eligibility by application of the policies expressed in paragraphs 12-37c and 12-38 of this chapter.

12-37. Special Considerations.

a. Rights-of-Entry. Generally, a right-of-entry is not an interest in real property and has no market value. Therefore, no credit can be afforded for a market value of a right-of entry for construction provided by a non-Federal sponsor. However, costs incurred by the non-Federal sponsor in the process of obtaining the right-of-entry may be treated as incidental costs and credited when the real property interest required for that tract is later acquired by the non-Federal sponsor. In the rare event that the Government has determined that a formal real property interest is not required and that a right-of-entry is sufficient, the District Chief of Real Estate may approve a credit amount for a right-of-entry as based upon the reasonable, allocable, and allowable costs incurred by the non-Federal sponsor in obtaining the right-of-entry.

b. Donations by Non-Federal Sponsor. Although a non-Federal sponsor may want to provide LER without claiming credit therefor, the value of all LER required for the project that must be provided by the non-Federal sponsor must be included as a part of project costs with credit afforded in such amount except as otherwise stated in paragraph 12-38 of this chapter.

c. Application of Federal Appraisal Principles. In addition to when the Government acquires LER on behalf of the non-Federal sponsor as discussed in paragraph 12-34 of this chapter, Federal appraisal principles must be applied to determine market value for crediting purposes in the following circumstances:

(1) For LER owned by the non-Federal sponsor prior to the date of Congressional authorization of a specifically authorized project or prior to the date of the Division Commander's approval of the project for continuing authority projects; and

(2) For Shore Protection Projects, lands subject to shore erosion that are required for project purposes and that must be provided by the non-Federal sponsor must be appraised for crediting purposes considering special benefits in accordance with relevant Federal statutes and Department of Justice regulations. For private land holdings, the non-Federal sponsor must receive credit for the LER value, if any, that results from application of this special benefits analysis. For public land holdings, any credit amount proposed must first be approved by HQUSACE through a request forwarded, through Division, to HQUSACE (ATTN: CERE). For additional discussion, see Memorandum from the Director of Civil Works, Revision to Policy Guidance Letter No. 11, Credit for Lands, Easements, and Rights-of-Way (LER) at Shore Protection Projects, dated 21 April 1989.

d. Informal Value Estimates. As provided in 49 CFR Part 24.102(c), an appraisal is not required for acquisition purposes if (1) the landowner is donating the property and releases the acquiring agency from this obligation, or (2) the acquiring agency determines that an acquisition appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2500 or less, based on a review of available data. Where no acquisition appraisal has been prepared by the non-Federal sponsor pursuant to either of these circumstances, and where the value estimate does not exceed \$2500, the non-Federal sponsor may submit, and the District Chief of Real Estate may approve, the non-Federal sponsor's informal value documentation and conclusions for the purpose of affording credit. Upon approval, the informal value documentation submitted shall be considered to be an appraisal for the limited purpose of compliance with the appraisal requirements in the PCA for the tract at issue. For all other tracts, credit appraisals must be submitted with approval authority commensurate with delegated authority amounts for appraisal approvals generally.

e. Multi-Purpose Projects. Where a project will be constructed to serve more than one authorized purpose, it is important that the LER requirements for each purpose are clearly identified so that the respective values can be properly assigned among the purposes with appropriate credit afforded toward the non-Federal sponsor's share of the costs of each project purpose. This is particularly important when the purposes have different cost sharing formulas or when there are different non-Federal sponsors for construction and Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) of the project purposes. For example, if the LER required for a flood control project consists of standard permanent levee easements, those interests must be so identified, valued, and assigned to the basic flood control project purpose. Additional estates on the same tracts that are required to support recreation must be separately identified with the incremental additional values assigned to the recreation project purpose. In no event can the value for the flood control easement combined with that of the additional interest required to support recreation on the same tract exceed the fee value for that tract. Once the values have been properly assigned among purposes, those values will be included in total project costs for the respective purposes and credit will be afforded in such amounts. For additional discussion, see CECW Policy Guidance Letters No. 30, Recreation Cost Sharing Credit For Increased Real Estate Interest for Recreation Development at Non-Reservoir Projects, dated 6 December 1991 and 36, Recreation Development at (Non-Lake) Structural Flood Control and Harbor Projects, dated 21 October 1992.

f. Impact of Project Changes. Where a non-Federal sponsor acquires an interest in real property after PCA execution and receipt of the Government's written notice to proceed with acquisition but subsequent project changes (e.g. design change) eliminate the need for such interest, the amount of credit afforded (or to be afforded as the case may be) must be reduced in accordance with consistent with the following principles:

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(1) If the acquired real property interest has a market value, credit and total project costs must be reduced by the lesser of the market value of the interest credited to the sponsor or the reasonable sales proceeds received by the non-Federal sponsor if such interest is sold to a third party in a timely fashion in an arms length transaction.

(2) Credit must still be afforded for the amount of the approved incidental costs of acquiring such interest pursuant to the terms of the PCA (including P.L. 91-646 benefit payments) as well as for the documented incidental costs, if any, of selling such interest subject to an audit to determine reasonableness, allocability and allowability.

(3) Application of these principles are not intended to penalize a non-Federal sponsor for acquiring real property as requested by the Government. Accordingly, it is acknowledged that many estates acquired by non-Federal sponsors for USACE projects have no market value (e.g. levee easements, temporary construction easements). In such cases the credit reduction principles are not applicable. It is further acknowledged that application of these principles may not under all circumstances produce an acceptable result as it relates to credit reduction. In such cases, and pursuant to a request by the non-Federal sponsor, a written request for deviation from application of such principles together with a full explanation of the circumstances and a recommendation for decision should be transmitted through division to CERE-AP for appropriate coordination, consideration and decision.

g. Hazardous, Toxic, and Radioactive Wastes (HTRW). As used in ER 1165-2-132, HAZARDOUS, TOXIC, AND RADIOACTIVE WASTE (HTRW) GUIDANCE FOR CIVIL WORKS PROJECTS, and as used in this chapter, the term "hazardous, toxic, and radioactive waste", or "HTRW", means any material listed as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq. (CERCLA). See 42 U.S.C. §9601(14). For crediting purposes, LER required for the project that is contaminated with CERCLA regulated materials shall be appraised with the assumption that the lands are no longer contaminated; that is, that an appropriate response action has occurred. Notwithstanding that an appropriate response action has been completed, the market value of the tract may be lessened due to the stigma that arises from its history of contamination. See Chapter 4, Appraisal, of this regulation; Real Estate Policy Guidance Letter No.1--Appraisal of Lands Containing Hazardous and Toxic Wastes, dated 19 November 1990; and Project Management Guidance Letter No.8--Appraisal of Lands Containing Hazardous & Toxic Wastes on Local Cooperation Projects, dated 5 November 1990.

h. Other Contaminants. The policy explained above in subparagraph g is limited to LER contaminated with CERCLA regulated materials. For crediting purposes, LER required for the project that is contaminated with materials not regulated by CERCLA shall be appraised for crediting purposes as it exists on the applicable date of valuation.

12-38. Exceptions to LER Credit. As a matter of policy, a non-Federal sponsor will not be afforded credit for the following categories of LER required for a project. Further, for projects that include LER value as a part of shared total project costs, the value amount that is non-creditable must be excluded from total project costs. Requests for exceptions to this policy together with persuasive rationale must be forwarded through Division to HQUSACE (ATTN: CERE-AP) for coordination and final determination.

a. Previously Provided as an Item of Cooperation. The non-Federal sponsor shall not receive credit for the value of any LER, including incidental costs, that have been provided previously as an item of cooperation for another Federal project.

b. Federal Funds. The non-Federal sponsor shall not receive credit for the value of LER, including incidental costs, to the extent that they were provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

c. Federal Lands. The non-Federal sponsor shall not receive credit for the value of LER acquired from Federal agencies if the acquisition of same was accomplished at no cost other than incidental costs. However, credit may be afforded for the non-Federal sponsor's documented incidental costs of acquiring such interests subject to an audit to determine reasonableness, allocability, and allowability. USACE will cooperate and, where possible, facilitate the non-Federal sponsor's effort to secure land for project use that is managed by a Federal agency.

d. Excessive Interests. Except as otherwise provided in paragraph 12-36f of this chapter, if the non-Federal sponsor acquires LER in excess of the requirements of the project as determined by the Government, only the value of the acreage or interest required to support the project as determined by the Government shall be eligible for credit.

e. Section 14 Projects. The valuation of LER for crediting purposes for continuing authority projects constructed pursuant to Section 14 of the Flood Control Act of 1946, as amended, 33 U.S.C. §701r, is the same as for other projects except for cases in which the required LER is part of the tract of land that includes the facility or structure being protected. In such cases, the non-Federal sponsor shall not receive credit for the value of LER it provides that:

(1) are part of the tract of land on which the facility or structure to be protected is located; and

(2) are owned by either the non-Federal-sponsor or the owner of the facility or structure when the PCA for the project is executed.

f. Navigation Servitude. In no event shall credit be afforded for lands that are available to the project through exercise of the navigation servitude.

g. Contingencies. In no event shall credit be afforded for contingency values designated in reconnaissance estimates, Gross Appraisals, M-CACES cost estimates, or other planning estimates of LER values.

12-39. Stipulating to Credit Amount in PCA.

a. Section 14 Projects. Where the cost of appraising LER that is eligible for credit for a Section 14 continuing authority project is estimated to exceed the market value of such interest, or interests, the non-Federal sponsor and Government may stipulate in the PCA for the project that the value of, and the credit amount for, the required interest, or interests, that are to be provided by the non-Federal sponsor is zero thereby avoiding the necessity and expense of the appraisal for such interest or interests. It must be noted, however, that use of such a stipulation is a deviation from Model PCA provisions and additional PCA approval may therefore be required.

b. Other Circumstances. Other than as discussed above, all proposals for stipulating to value and credit amounts in the PCA for some or all LER required for the project that must be provided by the non-Federal sponsor will be considered on a case-by-case basis. Such proposals must be agreed to by the non-Federal sponsor and must be submitted in writing together with justification to HQUSACE (ATTN: CERE-AP) for coordination and approval. Proposals for all stipulations in an amount greater than \$2500 must be based upon an appraisal approved by the Government that has been prepared in accordance with Chapter 4 of this regulation. Generally, submittal and approval of the proposal must occur prior to submittal of the draft PCA to CECW-AR for review so as to not delay PCA processing and approval.

12-40. Process and Procedures.

a. Timing of Credit Requests.

(1) Market Value of LER. To facilitate affording of credit for the market value of LER in a timely manner, the non-Federal sponsor should submit its credit request with supporting documents within 180 days after it provides the Government authorization for entry for such LER.

(2) Incidental Costs. For all other creditable items associated with the acquisition of LER, such as P.L. 91-646 relocation assistance payments or other documented acquisition costs, the non-Federal sponsor should submit its credit request with supporting documentation as soon as practicable but not less than on an annual basis.

(3) Reasonable Effort To Comply. Although these time frames for submission of credit requests may not be achievable in all events due to complexities in negotiations, condemnations, or other reasons, reasonable compliance efforts should be made so that project costs are appropriately and timely apportioned between the parties consistent with PCA accounting provisions and sound fiscal procedures.

b. Credits and Project Accounting Records. After Real Estate has preliminarily approved a LER credit amount in accordance with delegated authority policies, this amount should be reviewed and discussed with the PM. Real Estate should make available to the PM all information necessary for the PM to review the non-Federal sponsor's credit request. Once the LER credits are finally approved, it is the PM's responsibility to assure that credit amounts are recorded in project accounting records.

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c. No Credit Request. If a non-Federal sponsor does not submit a credit request, or sufficient documentation therefor in a timely manner, the District Chief of Real Estate should document actions taken in trying to obtain the credit request or documentation and provide such information to the PM for further action.